

NOREF Report

The Western Saharan autonomy proposal and political reform in Morocco

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Executive summary

The conflict in Western Sahara has been simmering since 1975 and has been on the UN Security Council agenda for over twenty years. In 2007, Morocco offered the territory autonomy within the borders of the Moroccan state. This proposed solution is supported by key international players, including France and the US, which have long-standing ties with Morocco and perceive an independent Western Sahara as a potentially weak state. However, the idea is staunchly opposed by Polisario, (the Western Saharan independence movement), and by its allies among African states (primarily Algeria) and within Western civil society. This opposition to autonomy is founded on the principle of the right to self-determination for the Western Saharan population.

A number of obstacles to the proposed solution – such as the exact borders of the autonomous region, the division of Western Saharan resources, and police and army presence – have been identified, but one in particular has been largely overlooked; can autonomy for Western Sahara work in the context of a Morocco which is still largely non-democratic? This question is particularly relevant in the current political climate in the Middle East and North Africa.

Generally speaking, autonomous arrangements in non-democracies have tended to function less well and/or to be more unstable. Both analysis and emerging international norms on the matter point in the same direction: autonomy can only truly exist within a democratic system. Morocco, even after a decade of real but hesitant and piecemeal reform, remains a monarchy where the king effectively holds all levers of power – executive, legislative, judicial, military, and spiritual. So far, democracy protests in the country have been comparatively small-scale and the sincerity of the king's promise of extensive constitutional reform has been met with doubt.

Questions thus arise as to the feasibility of autonomy within the current Moroccan political system. These include the concern that such a solution would create imbalances between a democratically self-governing Western Sahara (enjoying for example full freedom of expression and the legalisation of the majority of political parties) and an authoritarian Morocco. A true transfer of power to a regional entity within the current system – in which the prerogatives of the king are vast – would be patently difficult. Western Saharan representation and conflict resolution vis-à-vis a non-democratic Moroccan state would go against the grain of how the Moroccan system functions. More fundamentally, the rule of law and full respect for human rights, widely considered key to the smooth functioning of autonomous regions, would have to be instituted – a major step which the Moroccan government has so far been unwilling to take. Lastly, the clientelistic networks that underpin the current system of power in Morocco and which are also entrenched in Western Sahara would have to be uprooted.

In conclusion, some recommendations are made on how to advance negotiations for a final settlement of the Western Sahara conflict in the current context of transformation across the Middle East. Transitions can offer rare windows of opportunity to solve deadlocked conflicts. It would therefore seem sensible for the international community to make preparations, including informal talks between international and regional actors, a more fleshed-out autonomy proposal, and a renewed search for alternative solutions such as associate statehood or shared sovereignty. At the same time, recent history has showed that minorities and other vulnerable groups are often at greater risk in transition periods. This means that special attention to the Western Saharan situation is currently warranted. Above all, new attitudes of respect which avoid the disdainful rhetoric of the past must be promoted and nurtured.

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Introduction

The conflict in Western Sahara has been simmering since 1975 and has been on the UN Security Council agenda for over twenty years. Autonomy as a solution to the Western Saharan conflict has been floating around for decades and in 2007, Morocco officially offered the territory autonomy within the borders of the Moroccan state.¹ This proposal is supported by key international players, including France and the US, which have long-standing ties with Morocco and perceive an independent Western Sahara as a potentially weak state. Even western states sensitive to the Western Saharan cause such as Spain have shown enthusiasm for the

autonomy idea which is also in line with conflict resolution practices since the end of the cold war.² The idea is staunchly opposed by Polisario, (the Western Saharan independence movement), and by its allies among African states (primarily Algeria) and within Western civil society. This opposition to autonomy is founded on the principle of the right to self-determination for the Western Saharan population.

1 The history of the conflict and the positions of the main protagonists are outlined in several works, most recently Stephen Zunes and Jacob Mundy, *Western Sahara: War, Nationalism and Conflict Irresolution*, New York, Syracuse University Press, 2010; George Joffé, “Western Sahara: conflict without end?”, NOREF, March 2009, <http://www.peacebuilding.no/eng/Regions/Africa/Publications/Western-Sahara-Conflict-Without-End/>; International Crisis Group, “Western Sahara: out of the impasse” Middle East/North Africa Report no. 66, 11 June, http://www.acfid.asn.au/what-we-do/docs_what-we-do/docs_countries-regions/docs_africa/icgwesternsaharaoutoftheimpasse.pdf, all accessed 7 June 2011.

2 Marc Weller, “Settling Self-determination Conflicts: Recent Developments” *The European Journal of International Law*, vol 20, no. 1, pp 111-165, 2009, <http://www.ejil.org/pdfs/20/1/1788.pdf>. For a review of various states’ position on the issue, see Yahia H. Zoubir, “The Western Sahara conflict: regional and international repercussions”, *Concerned Africa Scholars Bulletin*, no. 85, June 2010, <http://concernedafricascholars.org/bulletin/85/zoubir/>; Anna Theofilopoulou, “Western Sahara: The Failure of ‘Negotiations without Preconditions’”, *United States Institute of Peace Peacebrief* 22, 23 April 2010, <http://www.usip.org/files/resources/PB%2022%20Western%20Sahara%20the%20Failure%20of%20Negotiations%20w-out%20Preconditions.pdf>, accessed 14 June 2011. The position of Algeria is thoroughly discussed in Jacob Mundy, “Algeria and the Western Sahara Dispute”, *The Maghreb Center Journal*, issue 1, Spring/Summer 2010, http://maghrebcenter.org/journal/MaghrebCenter%20Journal%20Mundy_Algeria-W%20Sahara.pdf, accessed 14 June 2011.

Wide-ranging territorial autonomy for Western Sahara might seem like an attractive way out of an intractable problem to many members of the international community. This paper argues that, even if other political obstacles to this proposed solution are overcome, one question which has been largely overlooked to date will require significant attention – not least in the current political climate in the Middle East and North Africa: can autonomy for Western Sahara work in the context of a Morocco which is still largely non-democratic?

Territorial autonomy³ is a tried and tested – albeit not always unproblematic – solution in democracies. It has been used in non-democracies as well, for example in Kurdish Iraq and a number of regions in China and Russia. However, generally speaking, autonomous arrangements in non-democracies have tended to function less well and/or to be more unstable. Both empirical analysis and emerging international norms on the matter point in the same direction: autonomy can only truly exist within a democratic system. The reason is that in authoritarian systems, the division of powers and the rule of law, important for functional autonomy arrangements, are *contre nature*.

Autonomy can only truly exist within
a democratic system.

The Arab spring has not so far made great inroads in Morocco. Even after a decade of real but hesitant and piecemeal reform, the country remains a monarchy where the king effectively holds all levers of power – executive, legislative, judicial, military, and spiritual. So far, democracy protests have been comparatively small-scale and the sincerity of the king's promise of extensive constitutional reform has been met with doubt.

In the context of recent events, this report sets out to examine the viability of Western Saharan autonomy within a non-democratic Morocco. A brief overview of autonomous status arrangements in both democracies and authoritarian systems is followed by the second section – a study of the Moroccan autonomy proposal for Western Sahara, specifically analyzing the “autonomy in autocracy” angle. The third section looks at the implications of the current wave of pro-democracy revolutions across the Arab world, focussing on the potential impact of a Moroccan democratization process on the prospects for an autonomy solution. The conclusions include recommendations on how to advance negotiations for a final settlement of the Western Sahara conflict in the current context of transformation across the Middle East.

Autonomous status arrangements: democracies v non-democracies

Territorial autonomy is quite commonly used as a solution to disputes involving minorities and indigenous peoples. Since the early 1900s it has been increasingly employed in Western Europe (examples include the Åland Islands, Greenland, the Faroe Islands, South Tyrol/Alto Adige, Madeira, the Azores, autonomy arrangements in Spain, and devolution in the UK).⁴ More recently, autonomy-style arrangements have become the “solution of choice” to post-cold war minority disputes in central and eastern Europe and beyond – such as Georgia (Adjara, often considered semi-autonomous), Macedonia (Orhid, considered *de facto* autonomous), Moldova (Gagauzia), and Ukraine (Crimea). Moreover, it has been employed as either a temporary or permanent solution for territories still under colonial rule of some form, such as New Caledonia (France) and Dutch overseas territories.

Autonomous status arrangements have been employed outside the European context as well, including in Indonesia (Aceh and West Papua), Iraq (Kurdistan), the Philippines (Mindanao), Sudan (South Sudan), and Eritrea within a larger Ethiopia in the 1950s, to name a few examples. In

3 For a clear introduction to the complex concepts of territorial and other forms of autonomy, see Marc Weller, “Introduction” in Katherine Nobbs and Marc Weller, eds, *Asymmetric Autonomy and the Settlement of Ethnic Conflicts*, Philadelphia, Pennsylvania University Press, 2010, <http://www.upenn.edu/pennpress/book/14757.html>. For a discussion of the relationship between autonomy, federalism, decentralization, self-government, and associate statehood, see Ruth Lapidoth, “Elements of Stable Regional Autonomy Arrangements”, CAP Working Paper, August 2001, <http://www.cap.uni-muenchen.de/download/2001/ra/Lapidoth1.pdf>, both accessed 7 June 2011.

4 For a survey of European cases, see Thomas Benedikter, “Europe’s Working Regional Autonomies: A Comparative Analysis”, Society for threatened peoples, 2008, <http://www.gfbv.it/3dossier/eu-min/work-autonomy.html>, accessed 7 June 2011.

India, several districts have been granted a form of autonomy. A number of Russian republics and regions have a special status, often as a legacy from Soviet times. China has a system of regional ethnic autonomy. Moreover, Hong Kong and Macau enjoy an autonomous status (as Special Administrative Regions) within the People's Republic, the status of the former negotiated with the British when they departed in 1997.

Not all such solutions have worked in practice. Obviously, there are complex reasons why various autonomy arrangements are more or less successful. However, analysts of autonomy generally agree that democracy is one of them.⁵ Two facets must be distinguished here: democracy *within* the autonomous region, and democracy of the state within which the autonomous area is located. Most analysts would agree with prominent scholar Ruth Lapidoth when she explains that “we have seen several factors which may enhance the success of a regime of autonomy. Some of them are *sine qua non*: democratic governance, respect for human rights, and a readiness for compromise.”⁶

Successful autonomy arrangements depend on both democracy within the autonomous region and democracy of the state within which the autonomous area is located.

That the autonomous area itself should be governed democratically is also recognized in the Moroccan proposal for Western Sahara (see [page 8](#) below, *The issue of democracy*) – not least because democracy is seen as a key condition for the fulfilment of what is termed “internal self-determination” (ie, the right to self-government). According to the Moroccan position, internal self-determination would replace external self-determination (the right to chose statehood) in the Western Saharan case. (For a further discussion of the distinction external/internal self-determination, see [page 8](#) below. Given that it is not contentious, internal democracy within the autonomous region will not be further discussed here.)

Democracy as a determining factor

What about the larger issue of democracy within the state granting autonomy? Again, analysts agree that this is a necessary condition for the success of autonomy arrangements, even though the issue has not received extensive attention. (In fact, many simply assume the existence of a democratic state, discussing what additional measures, such as autonomy, are needed to protect minorities). Lapidoth finds that “the prospects for success [of autonomous regions] are greater if both the central government and the autonomous authorities are based on democratic regimes.”⁷ Other leading analysts of autonomy concur. Stefan Wolff states that “while territorial autonomy is not automatically linked to forms of democratic governance, its success as a conflict settlement strategy has become increasingly connected to the management of ethnic or other forms of cultural diversity in democratic polities...”⁸ and, for Zelim Skurbaty, without “the proviso of the minimum level of democracy and the rule of law” an autonomous status “can turn out to be nothing more than a smoke screen concealing ruthless oppression of ‘peoples’ and ‘minorities’.”⁹ Yash Ghai notes that:

Autonomy arrangements are most likely to succeed in states with established traditions of democracy and the rule of law. Of autonomy arrangements in liberal societies, communist states and third world states, most successful examples are in liberal societies [based on democracy and the rule of law]... Autonomy arrangements require give and take; they depend on frequent negotiations for the adjustment of relationships or in the implementation of the law. The law provides the framework for relations between the centre and regions and defines the powers of the respective governments.¹⁰

5 This does not mean that democracy is a sufficient condition as for instance the notorious case of the Basque country in Spain testifies.

6 Ruth Lapidoth, “Elements of Stable Regional Autonomy Arrangements”, 2001, p 45 and p 24. See also Marc Weller, “Towards A General Comment on Self-Determination and Autonomy”, Office of the UN High Commissioner for Human Rights, Working Group on Minorities, Eleventh session 30 May-3 June 2005, E/CN.4/Sub.2/AC.5/2005/WP.5, p 17, <http://www2.ohchr.org/english/issues/minorities/group/11session.htm>, accessed 7 June 2011.

7 Lapidoth, “Elements...”, 2001, p 41.

8 Stefan Wolff, “Cases of Asymmetrical Territorial Autonomy” in Katherine Nobbs and Marc Weller, eds, *Asymmetric Autonomy*, 2010, Philadelphia, p18.

9 Zelim A. Skurbaty, *Beyond a One-Dimensional State: An Emerging Right to Autonomy*, Martinus Nijhoff Publishers, 2004, <https://www.brill.nl/beyond-one-dimensional-state-emerging-right-autonomy>, accessed 7 June 2011.

10 Yash Ghai, “Ethnicity and Autonomy: A Framework for Analysis”, Yash Ghai, ed, *Autonomy and Ethnicity: Negotiating Competing Claims in Multi-Ethnic States*, Cambridge University

Kjell-Åke Nordquist, examining older autonomy arrangements, agrees: “autonomy is, I would argue, in its very character a democratic form of institution. Its basic reason for existence is to effectuate the popular will. From this it follows that the difference in democracy level between the central government and the autonomy is likely to be a dimension affecting durability”. Testing this reasoning on actual cases, the author comes to the conclusion that, in practice as well as in theory, autonomy has as a rule been more durable in democracies than in non-democracies, discarding other explanatory factors, such as economic development.¹¹

Autonomy and authoritarianism are uneasy partners

Examining specific cases, the findings remain the same. Thus, for example, Hurst Hannum discussing Chinese autonomy arrangements concludes that “despite the designation of territories inhabited by ethnic or linguistic minorities within China as ‘autonomous’ regions, prefectures or counties, the present Chinese system does not grant meaningful autonomy to these entities”.¹² More recent analyses concur: “the current weak status of the rule of law in China, the lack of a democratic political system, as well as state priorities emphasizing unity, sovereignty, CCP [Chinese Communist Party] control, and economic development create considerable obstacles for realizing genuine autonomy within the existing system.”¹³ Regarding the specific case of Hong Kong, Johannes Chan notes that the territory has no separate power structure: “In short, ‘one country, two systems’ is really about ‘one country, two economic systems’”.¹⁴

Hannum’s discussion of earlier experiences of autonomy for South Sudan illustrates the problems that can occur in non-democratic states granting autonomy to one of its regions: “While neither the Addis Ababa Agreement

Autonomy to make own decisions is often very difficult for authoritarian governments to grant.

nor the implementing act provided the President [of Sudan] with specific authority to dissolve the Regional Assembly, the President was granted such power with regards to the National Assembly under Article 108 of the constitution. It is perhaps not surprising that [Sudanese President] Numeiri felt that he had equivalent powers of the regional assembly.” Moreover, “Numeiri regularly influenced selection of the southern Council President”. Such interventions fuelled “the well-entrenched suspicion that northern politicians were unwilling to leave the south in charge of its own affairs.”¹⁵

Autonomy confers power to local actors to make their own decisions in a number of areas. This is unlike decentralization, which simply means gaining some latitude in the implementation of decisions taken at the centre. This autonomy to make own decisions is often very difficult for authoritarian governments to grant.

Interestingly, one of the most prominent Moroccan analysts of the Western Sahara autonomy proposal, who is also close to the political process on this issue, repeatedly emphasizes that through the plan for autonomy, Morocco has “confirmed the irreversibility of the process of democratization which the country is experiencing, as autonomy has its own requisites, the most significant being the effective implementation of democracy on both national and local scale. Territorial autonomy is so associated and interwoven with democracy that the former is unimaginable without the latter”.¹⁶

Press, p 16, http://www.cambridge.org/gb/knowledge/isbn/item1167321/?site_locale=en_GB, accessed 7 June 2011.

- 11 Kjell-Åke Nordquist, “Autonomy as a Conflict-Solving Mechanism”, in Markku Suksi, ed, *Autonomy: applications and implications*, The Hague, Kluwer Law International, 1998, p 70.
- 12 Hurst Hannum, *Autonomy, Sovereignty, and Self-Determination: the Accommodation of Conflicting Rights* Philadelphia, University of Pennsylvania Press, 1996, p 426, <http://www.upenn.edu/pennpress/book/802.html>, accessed 7 June 2011.
- 13 Yash Ghai, Sophia Woodman and Kelley Loper, “Is There Space for ‘Genuine Autonomy’ for Tibetan Areas in the PRC’s System of Nationalities Regional Autonomy?”, *International Journal on Minority and Group Rights*, volume 17, 139, 2010, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1815887, accessed 7 June 2011.
- 14 Johannes Chan, “Asymmetry in the face of heavily disproportionate power relations: Hong Kong”, Nobbs and Weller, eds, *Asymmetric Autonomy*, 2010.

15 Hannum, *Autonomy, Sovereignty, and Self-Determination*, pp 323-324.

16 Abdelhamid El Ouali, *Saharan Conflict: Towards Territorial Autonomy as a Right to Democratic Self Determination*, London, Stacey International, 2008, http://www.stacey-international.co.uk/v1/site/product_rpt.asp?Catid0=255&catname=Reference, accessed 7 June 2011. El Ouali is a member of the CCR (Advisory Committee on Regionalisation).

Developments of soft law and the autonomy-democracy nexus

This discussion would not be complete without mentioning relevant international norms. Although the term “minority” or “indigenous people” is not applicable to the population of Western Sahara,¹⁷ it is within the minority and indigenous rights’ framework that one can find mention of autonomy and the effective participation of national minorities in public life, and it is therefore worth mentioning here. Effective participation and autonomy/self government have been dealt with most extensively at European level (Organisation for Security and Co-operation in Europe [OSCE] and Council of Europe), but have also been addressed within the UN framework. The existing standards on the issue primarily come in the form of “soft law”.¹⁸

Here again, the internal democracy of the autonomous region is considered key. The OSCE-sponsored Lund Recommendations on the Effective Participation of National Minorities in Public Life refer to the need for institutions of self-governance to “be based on democratic principles to ensure that they genuinely reflect the views of the affected population”.¹⁹ The issue of democracy of the state as a whole is not explicitly referred to in the relevant documents. Instead, they have tended to assume that the state is democratic. Thus, the Lund Recommendations open with the following sentence, “Effective participation of national minorities in public life is an essential component of a peaceful and democratic society”. The Recommendations also stress that the judicial resolution of conflicts “requires that the State possess an independent, accessible, and impartial judiciary whose decisions are respected”.²⁰

The same is true in the documents of the Advisory Committee on the Framework Convention for the Protection of National Minorities (the Framework Convention is a Council of Europe instrument). Here as well the existence of democracy is assumed, and the concern is to deepen it by increasing the participation of minorities, one of the means being autonomy arrangements.²¹ UN recommendations are less explicit on this issue, but consideration of the “legitimacy of minority political representatives” and a warning against “tokenism” in the political participation and representation of minorities (not specifically related to autonomy arrangements) are nevertheless included.²²

The Moroccan autonomy proposal for Western Sahara: can it work in a non-democratic context?

The current Moroccan autonomy proposal was slow in the making. Autonomy as a solution to the Western Saharan conflict has in fact been floating around for decades. It found its first official expression ten years ago, in the so-called Baker Plan I of 2001, which envisaged a form of autonomy before a final status referendum. The Baker Plan II of 2003 proposed a “very robust autonomy under the direct control of native Western Saharans” during the interim before the proposed referendum. It had been elaborated by Hurst Hannum, an acknowledged authority on autonomy.²³ As a response to the Baker Plan II, Morocco unofficially floated a “draft autonomy status”, which was considered inadequate by James Baker, who asked Hannum to assist the Moroccan team in refining it. According to Stephen Zunes and Jacob Mundy, the Moroccan side did not wish to make any robust changes to its plan however.²⁴ After some years of pressure from France and the

17 For a disambiguation between the concepts of “people” and “minority”, see Gudmundur Alfredsson, “Peoples”, 2010, *Max Planck Encyclopedia of Public International Law*, Heidelberg and Oxford University Press, <http://www.mpil.de/ww/en/pub/research/details/publications/institute/epil.cfm>, accessed 14 June 2011.

18 For an overview, see Asbjørn Eide, “International Cooperation for Group Accommodation through Minority Protection: A Review of Standard Setting and Institution Building at Regional and Global Levels”, *International Journal on Minority and Group Rights*, 2006, vol 13, 2-3, pp 153-170, <http://www.ingentaconnect.com/content/mnp/ijgr/2006/00000013/f0020002>, accessed 14 June 2011.

19 *The Lund Recommendations on the Effective Participation of National Minorities in Public Life & Explanatory Note*, OSCE High Commissioner on National Minorities, September 1999, para 16, <http://www.osce.org/hcnm/32240>.

20 Lund Recommendations, paras 1 and 24.

21 Advisory Committee on the Framework Convention for the Protection of National Minorities, *Commentary on the Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs*, adopted 27 February 2008, ACFC/31DOC(2008)001, http://www.coe.int/t/dghl/monitoring/minorities/3_fcnmdocs/PDF_CommentaryParticipation_en.pdf, accessed 7 June 2011.

22 UN Human Rights Council, “Background document by the independent expert on minority issues, Gay McDougall, on minorities and effective political participation”, A/HRC/FMI/2009/3, para 27, <http://www2.ohchr.org/english/bodies/hrcouncil/minority/docs/A-HRC-FMI-2009-3.pdf>, accessed 7 June 2011.

23 Zunes and Mundy, *Western Sahara*, pp 223, 229-230.

24 Zunes and Mundy, *Western Sahara*, pp 236-7.

US, the Moroccan government finally presented the Moroccan Initiative for Negotiating an Autonomy Statute for the Sahara Region in 2007.²⁵

The Moroccan proposal is brief, with less than two dozen substantive clauses. It has been criticized for its vagueness, but the Moroccan government stresses that the reason for the brevity of the plan is that it was conceived as a basis for negotiation.²⁶

There has also been criticism of specific points of the plan. Thus, the proposed role of the head of the autonomous region has been seen as ambiguous. According to the proposal he/she would serve both as the elected head of the autonomous region and as the representative of the Moroccan state. As noted by Anna Theofilopoulou, “while the 2003 [unofficial Moroccan] proposal foresaw two different roles, with the head of the local government subordinate to the state representative, it is unclear whether the new proposal recommends one office holder or two.”²⁷

For some analysts, this means that the executive would be beholden to the Moroccan king.²⁸ Others stress that “the fact that investiture of the Head of Local Government is done by the King and that he represents the central state is a mere formality, the aim of which is to remind us of the unity of the Moroccan State; consequently it cannot affect how its governmental functions are carried out.”²⁹ State Department cables obtained by Wikileaks reportedly show that there was some scepticism also among states favouring an autonomy solution. Thus, “A candid conversation in March 2007 among political counsellors from Spain, the US, Britain, France and

Germany suggests a consensus that the proposal does not offer autonomy at all, insofar as ‘Rabat would retain full control’.”³⁰

Apart from extensive clarification, a number of other points of the plan – not least regarding the exact borders of the autonomous region, the division of Western Saharan resources, police and army presence, land rights, symbols such as flag and anthem, and even the very name of the region – would no doubt lead to fierce debate were the idea of autonomy to be accepted by Polisario.³¹ Other paragraphs remain fairly standard, however, and are inspired by international experiences, as regularly pointed out by Moroccan analysts.

In the absence of progress in the negotiations since the plan was submitted, Morocco has moved ahead with plans for “regionalisation”. In early 2010, a *Commission consultative de la régionalisation* (Advisory Committee on Regionalisation, CCR) was announced by King Mohammed VI, complementing the Royal Advisory Council for Saharan Affairs (Conseil Royal Consultatif des Affaires Sahariennes, CORCAS), created in 2006. The stated goal of the CCR is to insert autonomy for Western Sahara into a larger framework of regionalization, which, it is hoped, would make the autonomy solution more palatable and enable regional cooperation across the Moroccan-Algerian border. The CCR submitted its report to the king at the end of 2010. The report maintains the subdivision of the “southern provinces” into three regions, but suggests some changes as to their composition (Guelmim-Oued Noun, Laâyoune-Saguia al Hamra, and Ed Dakhla-Oued ed Dahab).³² It stresses that the proposal takes into account the future application of the autonomy plan.³³

25 Moroccan Initiative for Negotiating an Autonomy Statute for the Sahara Region (hereafter Moroccan Autonomy Initiative), 2007, <http://www.maec.gov.ma/Initiative/En/Default.asp>, accessed 7 June 2011.

26 However, some doubt has been cast on this reasoning by a leaked letter from UN negotiator Christopher Ross to the heads of state of the so-called Group of Friends of June 2010. It stated that the Moroccan delegation had refused to engage in an exchange of ideas when in early 2010, Polisario, for the first time ever, made substantive comments on Morocco’s 2007 autonomy proposal. Jacob Mundy, “Western Sahara’s 48 Hours of Rage” *Middle East Report* 257, 2010, <http://www.merip.org/mer/mer257/western-saharas-48-hours-rage>, accessed 7 June 2011.

27 Anna Theofilopoulou, “Western Sahara - How to Create a Stalemate”, United States Institute of Peace, May 2007, <http://www.usip.org/publications/western-sahara-how-create-stalemate>, accessed 7 June 2011.

28 Zunes and Mundy, *Western Sahara*, 2010, p 244.

29 El Ouali, *Saharan Conflict*, 2008, pp.150-1.

30 Jacob Mundy, “Western Sahara’s 48 Hours of Rage”, 2010.

31 For a general critique of the autonomy idea and the proposal, see Carlos Ruiz Miguel, “The 2007 Moroccan Autonomy Plan for Western Sahara: Too many Black Holes”, Grupo de Estudios Estratégicos, June 2007, http://www.upes.org/bodyarticulos_eng.asp?field=articulos_eng&id=263, accessed 14 June 2011; Malainin Lakhal, Ahmed Khalil and Pablo San Martin, “Moroccan Autonomy for the Western Sahara: A Solution to a Decolonisation Conflict or a Prelude to the Dismantling of a Kingdom?”, *Review of African Political Economy*, vol 33, no. 108, June 2006, pp 336-341, <http://www.roape.org/108/13.html>

32 Royaume du Maroc, Commission consultative de la régionalisation (CCR), “Rapport sur la régionalisation avancée: Soumis à la Haute Attention de Sa Majesté Le Roi Mohammed VI”, 2010, p 35, http://www.regionalisationavancee.ma/PDF/Rapport/Fr/L1_ConceptionGenerale.pdf, accessed 7 June 2011.

33 Royaume du Maroc, CCR, “Livre II rapports thématiques”,

The issue of democracy

The notion of democracy is central in the Moroccan autonomy proposal for Western Sahara. The preamble to the proposal notes that “This initiative is part of the endeavours made to build a modern, democratic society, based on the rule of law, collective and individual freedoms, and economic and social development.”³⁴ It also underlines that

Can democracy be granted to Western Saharans while the majority of Moroccans do not enjoy it?

“the Sahara populations will themselves run their affairs democratically, through legislative, executive and judicial bodies enjoying exclusive powers”.³⁵ A similar wording is found in the first substantive provision of the proposal,

which stresses that the populations of the Sahara autonomous region shall exercise their powers “in keeping with democratic principles and procedures”.³⁶

In official Moroccan statements, democracy is also underscored. In late 2010, Mohammed VI stressed that the Moroccan autonomy proposal has gained extensive international acceptance in part because it is based on “internationally recognized democratic standards”.³⁷ This follows similar pronouncements since the plan was issued.

Democracy is, in fact, part and parcel of the intellectual and legal underpinnings of the proposal. Thus, following current scholarly debate on the interpretation of the concept of self-determination, Moroccans close to the process have stressed that “we are today seeing the emergence of a new paradigm where self-determination means not so much independence as the right to democratic governance”.³⁸ Thus, self-determination can be achieved through democratic autonomous rule (see also [page 4](#) above).

Hurdles posed by the Moroccan political system

However, the Moroccan autonomy proposal poses a number of thorny issues in terms of democracy. Some are related to specific points of the proposal, but the bulk concern the feasibility of the project overall within the current Moroccan political system. Problems include the following

1. As noted above, autonomy is perceived as presupposing democracy within the self-governing territory. As we just saw, this is also recognized in the Moroccan proposal, which repeatedly stresses the democracy aspect. The question then becomes: can democracy be granted to a minority while the majority does not enjoy it? From an international law standpoint, this is doubtful, as it appears to be contrary to the principle of equal treatment. From a practical standpoint, it poses a number of difficulties, as illustrated by two brief examples:

- A democratic Western Sahara would enjoy freedom of expression, which would by necessity breach the current *lignes rouges* delimiting public debate in Morocco. Thus, for example, even an opinion poll showing that Mohammed VI enjoys a 90% approval rating is strictly censored in Morocco. Permitting a discussion in Western Sahara on such issues would entail a strained duality within the country.
- The Lund Recommendations stress the freedom to establish political parties based on communal identities.³⁹ In Morocco today, a number of political movements are banned. It would be hard to imagine that a communal Western Saharan party, perhaps springing from the Polisario front, could be legalised while for instance the non-violent Islamist Al Adl Wal Ihsane remains banned.

2. For an autonomous arrangement to work, autonomous authorities must possess real power to make decisions at the legislative, executive and,

2010, p 198, http://www.regionalisationavancee.ma/PDF/Rapport/Fr/L2_Rapports_thematiques.pdf, accessed 7 June 2011.

34 Moroccan Autonomy Initiative, 2007, part I, paragraph 3.

35 Moroccan Autonomy Initiative, 2007, part I, paragraph 5.

36 Moroccan Autonomy Initiative, 2007, part II, paragraph 12.

37 Mawassi Lahcen, “UN Sahara envoy launches latest Maghreb tour”, Magharebia, 19 October 2010, http://www.magharebia.com/cocoon/awi/xhtml1/en_GB/features/awi/features/2010/10/19/feature-01, accessed 7 June 2011.

38 El Ouali, *Saharan Conflict*, 2008, p 13.

39 Although the Moroccan proposal is not subject to European legal standards, Moroccan protagonists themselves tend to stress that the proposal conforms to international and European standards. See for example El Ouali, *Saharan Conflict*, 2008; Abdallah Harsi, “Le projet marocain d’autonomie et les expériences étrangères: le modèle belge”, ARSOM, 2007, <http://www.arsom.org/page.php?IDA=113>; Belhouari Hamid, “Le Plan d’autonomie proposé par le Maroc”, *Planautonomie.com*, 2010, http://www.plan-autonomie.com/index.php?option=com_content&view=article&id=153&Itemid=6, both accessed 7 June 2011.

sometimes, judicial level. The proposal in principle grants such powers to Western Sahara but, at the same time, it stipulates that the state shall keep exclusive jurisdiction over “the attributes stemming from the constitutional and religious prerogatives of the King, as Commander of the Faithful and Guarantor of freedom of worship and of individual and collective freedoms”.⁴⁰ Under the current Moroccan constitution, these prerogatives are very vast indeed. This again, reveals the tension between the requirements of autonomy, on the one hand, and the very essence of the Moroccan political system, on the other. Thus, in Morocco as a whole, the legislature, the judiciary, and the government do not wield authority independently from the monarch. If the Western Saharan institutions were to do so, it would involve a radical breach with this system.⁴¹

3. Autonomy not only presupposes internal democracy within the territory, but equally important, representation and participation of the autonomous region at national level. However, genuine interest representation and participation is not the rule in political life in Morocco – representative institutions are notoriously weak and consultation mechanisms, while gaining ground, have still to prove that they make a difference to Moroccan decision-making processes. Western Sahara would, again, be an anomaly within the Moroccan political system.

4. Institutional remedies that can deal with conflicts between the centre and the autonomous region are perceived as key to the smooth functioning of autonomy arrangements. Moroccan legal scholars normally assume that the Constitutional Council (*Conseil constitutionnel*), the Supreme Court, and administrative tribunals (the latter would deal with administrative measures of an autonomous Western Sahara) would be responsible for determining if autonomy competencies have been overstepped or in any other case of conflict between the autonomous region and the central government.⁴² For such

remedies to be effective, a minimum requirement is an independent judiciary which, again, does not exist in Morocco.⁴³

5. As noted by Abdelhamid El Ouali, many of the provisions of the Moroccan proposal have been borrowed from experiences elsewhere (Spain, the Åland Islands). These European models are, as a matter of fact, often less generous than perhaps widely assumed in terms of competences granted to the autonomous region(s). As stressed by Ghai, conditions conducive to the smooth application of such autonomy provisions include a spirit of give and take, frequent negotiations, and the adjustment of relations (see page 4 above). Thus, restrictive provisions must be used only as a very last resort. For example, El Ouali notes that “The [Moroccan] initiative does not seem to have envisaged the question of the dissolution of Parliament in the Autonomous Region of the Sahara. This kind of question [sic] usually comes from the State. So, for example, the Finnish President has the right to dissolve the Assembly of the Åland Islands, and call for new elections”.⁴⁴ In a democratic context such as the Finnish, the provision has never been used in practice but in a non-democratic country, such a provision becomes more problematic as there is a risk that it could be applied more frequently.

Effective protection of human rights is crucial for autonomy to be sustainable.

6. Respect for the letter and the spirit of the law implies the key question of human rights. There is unanimous agreement that the effective protection of human rights is crucial for autonomy arrangements to be sustainable, and human rights provisions have systematically been included in recent autonomy arrangements. Human rights are, again, better protected in democratic societies, both in law and in actual implementation (although since 9/11 there have been some glaring exceptions to this rule).

40 Moroccan Autonomy Initiative, 2007, part II, para 14.

41 This is a point that has been made by a number of analysts. See for example Yahia H. Zoubir, “Conflict in Western Sahara” in David S. Sorenson, ed, *Interpreting the Middle East: Essential Themes*, Westview Press, 2010, p 316, <http://www.westviewpress.com/book.php?isbn=9780813344409>; James N. Sater, “Morocco’s Autonomy Proposal”, *The Middle East Institute Viewpoints*, no. 6, April 2008, p 6, <http://www.mei.edu/Portals/0/Publications/Western-Sahara.pdf>, both accessed 7 June 2011.

42 Abdallah Harsi, “La conformité des actes émanant des organes

de la région autonome au statut d’autonomie » *Autonomie Régionale du Sahara Occidental Marocain*, ARSOM, 2007, <http://www.arsom.org/page.php?IDA=89>, accessed 7 June 2011; Harsi, “Le projet marocain d’autonomie et les expériences étrangères”, 2007.

43 For a brief discussion of efforts to reform the judiciary, see Anna Khakee, “Assessing Democracy Assistance: Morocco”, *FRIDE/World Movement for Democracy*, 2010, <http://www.fride.org/publication/780/morocco>, accessed 7 June 2011.

44 El Ouali, *Saharan Conflict*, 2008, p 150.

7. Beyond the actual proposal and the details of autonomy arrangements are certain other problems, generated by the way authoritarian power structures are maintained in Morocco. Thus, analysts widely agree that the Moroccan political system is based on, and survives thanks to, patronage networks. This is true for political parties and the state administration. It is equally true for the military and the police. Thus, according to two experts on the Western Sahara conflict, “high-level Moroccan officers in the Sahara have been given control over many aspects of the Western Saharan economy, especially in fisheries”, which has led to their considerable enrichment.⁴⁵ Genuine autonomy would require that such patronage networks be removed: yet removing them would risk undermining the structure on which power is based in Morocco.

To sum up, there are many reasons why autonomy for Western Sahara would be difficult to implement within a non-democratic Moroccan political system. Thus, the above discussion illustrates the reasons why, in both emerging soft law and among analysts, there is widespread agreement that autonomy can only thrive within democratic political systems. The next section examines how the current wave of transformation in the Arab world impacts on this equation.

Implications of the current wave of pro-democracy revolutions in the Arab world

Arab political systems are currently in upheaval. At the time of writing, Morocco was one of the states least affected, owing to several factors: the political space in Morocco is already relatively wide compared to that of most other countries in the region; combating poverty and illiteracy has been made a priority in recent years; and Mohammed VI is genuinely popular in many quarters and enjoys a particular status as a bearer of Moroccan identity. If current transformations in the region prove successful, it is hard to imagine that Morocco would not follow suit, however. Already now, the leadership has promised to accelerate reforms, amidst calls for an introduction of a constitutional monarchy similar to that found in Spain or the UK.

Democratization in Morocco would clearly change the equation regarding Western Sahara generally and specifically the viability of the autonomy proposal. What the previous discussion has made clear is that genuine democratization in Morocco could remove some important obstacles to the smooth functioning of a potential autonomy solution for Western Sahara. Such obstacles include: the otherwise difficult imbalance between a democratically self-governing Western Sahara and an authoritarian Morocco; the difficulty of conceiving a true transfer of power to a regional entity within the current system; the problems surrounding Western Saharan interest representation and conflict resolution vis-à-vis a non-democratic Moroccan state; the lack of rule of law and full respect for human rights in the country; and the clientelistic networks that underpin the current system of power and which are also entrenched in Western Sahara.

At a more general level, it is widely thought that the survival of the monarchy in its present form is conditioned on the outcome in Western Sahara, as the monarchy has made it into a main rallying cry. This is also one of the reasons why Morocco has been able to gain support for its position internationally: without Western Sahara, no stable, monarchic Morocco. When and if this equation changes, so might the chances for breaking the deadlock on Western Sahara.

The dangers of transition

At the same time, democratization entails dangers of its own. Transition periods – as central and eastern European experiences have shown – are dangerous times for minorities and other vulnerable groups. The Moroccan public (like the Algerian and, to a lesser extent, Western Saharan) has heard only one side of the story for a number of years now and the discourse has been rather inflammatory. Even the speeches of the Moroccan king are replete with references to “perfidy”, “traitors”, and “enemies.”⁴⁶

One result of this biased discourse has been that even a liberal news magazine such as *Tel Quel*, when listing fifty proposals for concrete political reforms

45 Zunes and Mundy, *Western Sahara*, 2010, p 251.

46 See King Mohammed VI’s speeches under “Discours royaux” at <http://www.maec.gov.ma/fr/default.asp>. One illustration: “Either one is a patriot or a traitor. There is no middle ground between patriotism and treason.” *Discours de Sa Majesté le Roi à la Nation à l’occasion du 34ème anniversaire de la Marche Verte*, Quarzazate, 6 November 2009. Author’s translation.

in mid-February 2011, suggested two reforms regarding Western Sahara: that all subsidies for Western Saharans be removed because “Sahraouis, vous êtes des Marocains comme les autres”, and that the debate on Western Sahara be opened up to include political and NGO figures “known for their integrity and competence” which would help to “better defend the Sahara dossier internationally and to mobilize more internally”.⁴⁷ Thus, a fledgling democratic government might be tempted to rack up support by using an all too familiar all-or-nothing/with-us-or-against-us rhetoric.

Transition periods are dangerous times for minorities and other vulnerable groups.

Hope remains for a more positive outcome, nevertheless. A democratic government enjoying the support of the Moroccan population would by necessity entail the end of the *hogra* (disdain) which so exasperates and humiliates Arabs across the region and which has fuelled the protests to a significant extent. Infusing a healthy dose of mutual respect in the relationship between rulers and ruled, and between Moroccans and Western Saharans, could also clearly be useful in Western Sahara, where disrespect is so entrenched at many levels. A more respectful outlook might just possibly form the basis for a renewed and less hostile style of interaction. In any event, what seems clear is that Western Sahara will be an important test case for democratization in Morocco, and that the Western Saharan conflict represents a potentially very difficult hurdle in the democratization process.

Conclusions and recommendations for international actors

“Autonomy in autocracy” is a difficult equation and the Moroccan autonomy proposal for Western Sahara offers yet another illustration of why this is so. In essence, the throne would, at a minimum, have to relinquish substantial power and ensure the rule of law, while curbing important patronage networks in the region. Such reforms go against key elements of the Moroccan power structure. Just a few months ago, this autonomy in autocracy conundrum would

have constituted a formidable challenge, as dealing with it in fact requires nothing less than a profound transformation of the entire Moroccan political system. Now, suddenly, such a transformation appears less unlikely.

For international actors that want to solve the frozen conflict in Western Sahara, this potential for change has a number of implications. First, it means that autonomy may become a more realistic proposition in terms of viability and actual implementation – however this must not be taken to mean that it has become any more palatable to Polisario or the Western Saharan population.⁴⁸

Many have stressed that democracy is needed to discuss the Western Saharan issue calmly within Morocco: that a serene and nuanced discussion would be the result of an opening of the political space is debatable, however.

The situation is fluid and could change quickly, and attempting to make concrete recommendations is problematic. Here are, however, some possible avenues:

- 1) Transitions often offer rare windows of opportunity to solve issues which have long been deadlocked. Hence, it will be important for the international community to make maximum use of any upcoming transformation of the Moroccan and Algerian political systems to solve the long-standing conflict in Western Sahara before the window closes again. This would seem to be the time for preparations, including informal talks between international actors (including the so-called Group of Friends) and regional actors.
- 2) Now would also be a good time to elaborate a detailed proposal for Western Saharan autonomy within a fully democratic Morocco, including international guarantees for its functioning. Such a proposal could be useful to have on stand-by, as and when it might be needed.

47 “La révolution... avec lui”, *Tel Quel*, 19-25 February 2011, <http://www.telquel-online.com/461/images/50%20raisons.pdf>, accessed 14 June 2011. Author’s translation.

48 George Joffé, “Sovereignty and the Western Sahara”, *The Journal of North African Studies*, 2010, vol 15, no. 3, pp 375-384, <http://www.informaworld.com/smpp/content~db=all~content=a928356127~frm=titlelink>, accessed 14 June 2011.

3) The potential exists for finding fresh solutions, including associate statehood or shared sovereignty – as the toolkit for conflict resolution is more diverse than is sometimes assumed.

4) The dangers of transition are numerous, in particular for vulnerable groups such as the Western Saharans. Special caution and attention to the Western Saharan situation is therefore warranted at the present time.

5) “Regionalization” as currently promoted by the Moroccan leadership might seem to be in line with the democratization agenda. Yet, in so far as it would amount to a form of “forced” autonomy for Western Sahara, it is in fact quite counterproductive. Autonomy is, as we have seen, an institution that must be based on democracy, and thus the consent of the population concerned is a requisite.

6) The current uprisings across the Middle East are in part a revolt against the *hogra*, the disdain permeating political life. Therefore they potentially offer an opportunity to alter the often deleterious tone and attitude prevailing between the different sides of the Western Saharan conflict. It could be useful to actively promote, with interlocutors on all sides, a new attitude of respect. If new actors on all sides could avoid the rhetoric and sometimes disdainful practices of the past, much could be won.

If the upheavals in the Arab world have taught us anything, it is that defeatism and cynicism do not always hold the day. Hopefully, that will also come true in Western Sahara.

Further reading

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